

<sup>2</sup> The Board notes that, following the July 28, 2021 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On June 23, 2021 appellant, then a 34-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on June 1, 2021 she sustained a left knee sprain when she slipped on a bag while in the performance of duty. On the reverse side of the claim form, A.E., an employing establishment supervisor, acknowledged that appellant was injured in the performance of duty. However, he indicated that his knowledge of the facts about the injury was inconsistent with her statements and that the employing establishment was controverting the claim because she did not report the incident to management for more than two weeks. Appellant stopped work on June 10, 2021.

The record reveals that on June 13, 2021 appellant was seen by Dr. Farhad Gazi, a Board-certified emergency medicine physician, who diagnosed a knee sprain and prescribed medical treatment.

In a routing slip dated June 21, 2021, appellant asserted that on June 1, 2021, at approximately 6:00 p.m., she was instructed to place bags at the front of her truck, and after she backed into the docks, she slipped and banged her knee. She explained that she initially experienced discomfort and used a knee brace for her symptoms, but on June 13, 2021 she sought emergency treatment for a swollen knee and foot, and was subsequently diagnosed with a knee sprain.

In a letter of controversion dated June 25, 2021, S.J., an employing establishment human resources management specialist, informed OWCP that, in the CA-1 form, appellant did not report where the incident occurred, and that it was unclear whether the incident occurred. S.J. further indicated that appellant did not notify her supervisor on the same day of the accident and that the employing establishment requested further development of her claim. In a second letter of controversion dated June 28, 2021, A.E. summarized appellant's account of the alleged employment incident as she slipped on a relay bag and hit her knee on the cargo door while offloading her delivery truck. He further noted that she did not report the incident until June 21, 2021, more than two weeks after the alleged incident. A.E. also indicated that appellant continued to work from June 1 through 10, 2021 with use of a knee brace.

In a June 28, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. In the same letter, it also informed the employing establishment that, if she was treated at an employing establishment medical facility for the alleged injury, it must provide treatment notes. OWCP did not receive a completed development questionnaire from appellant.

On June 24, 2021 Dhita Ngy, a family nurse practitioner, noted that appellant had been excused from work since June 13, 2021 due to her left knee condition and advised that she not return to work until further evaluation by an orthopedic physician.

In an attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), dated June 29, 2021, Ms. Ngy noted that appellant was a city carrier and that she experienced pain and swelling after she hit her left knee on a cab door on June 1, 2021.

She also explained that the date of her first examination was June 21, 2021, but that she was also seen in the emergency room on June 13, 2021. In a duty status report (Form CA-17) of even date, Ms. Ngy reiterated appellant's account that she slipped and "banged her knee" on the cargo door of a two-ton truck at work on June 1, 2021 and diagnosed left knee sprain. She noted that appellant should not report to work if she was to perform her official duties without restrictions.

By decision dated July 28, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that an injury occurred in the performance of duty on June 1, 2021, as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

medical treatment may, if otherwise unexplained, cast sufficient doubt on the employee's statements in determining whether a *prima facie* case has been established.<sup>8</sup> An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on June 1, 2021, as alleged.

Appellant has not established the factual component of her claim as she has insufficiently explained how and where the claimed June 1, 2021 injury occurred.<sup>10</sup> In her June 23, 2021 Form CA-1, she alleged that she slipped on bags and sprained her left knee while in the performance of duty on June 1, 2021. However, the employing establishment asserted that appellant reported that she injured her knee when she banged it into a cargo door.<sup>11</sup> Likewise, Ms. Ngy, in a Form CA-17 and attending physician's report also related her allegation that she banged her knee into a truck cargo door. Furthermore, in its development questionnaire, OWCP requested that appellant provide a clarifying and detailed statement regarding the factual circumstances of her claimed injury; however, she failed to submit a response.<sup>12</sup> The Board finds that appellant's description of the incident in her Form CA-1 is inconsistent with her reports to the employing establishment and her medical providers

As the evidence of record is insufficient to establish that the June 1, 2021 incident occurred as alleged, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish a traumatic injury in the performance of duty on June 1, 2021, as alleged.

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<sup>8</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>10</sup> *Id.*

<sup>11</sup> The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

<sup>12</sup> *K.S.*, Docket No. 17-2001 (issued March 9, 2018); *see also K.W.*, Docket No. 16-1656 (issued December 15, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board